



## HARSH OR EXCESSIVE SENTENCE

The sentencing court should impose the minimum sentence that is “consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant” (*People v Notey*, 72 AD2d 279, 282-283 [2d Dept 1980], quoting ABA Standards Relating to Sentencing Alternatives and Procedures, Approved Draft, § 2.2; *see also* ABA Criminal Justice Standards: Sentencing standard 18-6.1). Moreover, the sentencing court should consider the “promotion of [the defendant’s] successful and productive reentry and reintegration into society” (Penal Law § 1.05 [6]).

The Appellate Division may reduce a legally imposed sentence in the interest of justice if the punishment is deemed harsh or excessive (*see* CPL 470.15 [6] [b]). This sentence-review power may be exercised “without deference to the sentencing court” and even when the sentence has been agreed upon as part of a plea bargain (*People v Delgado*, 80 NY2d 780, 783 [1992]; *see People v Briggs*, 211 AD3d 442 [1st Dept 2022]; *People v Suitte*, 90 AD2d 80, 85-86 [2d Dept 1982]; *see also People v Baldwin*, 39 NY3d 1097 [2023, Wilson, J., concurring]).

A defendant generally waives the right to challenge a sentence as harsh and excessive by executing a valid waiver of the right to appeal. However, the Appellate Division’s interest-of-justice jurisdiction permits review of the sentence

notwithstanding a valid waiver (*see* CPL 470.15 [6] [a]; *People v Lopez*, 6 NY3d 248, 255 [2006]).

## **Factors**

Appellate courts have held that a variety of factors warrant the reduction of a legally imposed sentence in the interest of justice. Many are listed below.

### ***Condition of Defendant***

Circumstances prior to the offense that worsened existing mental health issues and contributed to the commission of the offense (*see People v Howard*, 120 AD3d 1259, 1261 [2d Dept 2014]).

Crime out of character for the defendant (*see People v Kerringer*, 195 AD3d 861 [2d Dept 2021]; *People v Fernandez*, 84 AD3d 661, 663-664 [1st Dept 2011]).

Family background (*see People v Dyer*, 60 AD3d 690 [2d Dept 2009] [prison sentence and postrelease supervision reduced due in part to the defendant's family background]; *People v Meriwether*, 51 AD3d 823 [2d Dept 2008] [sentence reduced because of the defendant's family background, among other factors]; *People v Artuso*, 87 AD2d 873 [2d Dept 1982] [family background used as a basis for reducing sentence]).

Family obligations (*see People v Kerringer*, 195 AD3d 861 [2d Dept 2021]; *People v Smith*, 222 AD2d 738, 738 [3d Dept 1995]).

Mental health and substance abuse problems (*see People v Farrell*, 169 AD3d 919, 920-921 [2d Dept 2019]; *People v Kordish*, 140 AD3d 981, 982-983 [2d Dept 2016]; *People v Justiniano*, 134 AD3d 1172, 1174 [3d Dept 2015]; *People v Kearns*, 66 AD3d 1084, 1085 [3d Dept 2009]; *People v Wilt*, 18 AD3d 971, 972 [3d Dept 2005]).

Offense that was due to defendant's mental illness (*see People v Gillie*, 185 AD3d 1539 [4th Dept 2020]).

Physical condition/health/disability (*see People v Masucci*, 266 AD2d 579, 580-581 [3d Dept 1995]; *People v Notey*, 72 AD2d 279 [2d Dept 1980]).

Youth (*see People v Colon*, 192 AD3d 1567 [4th Dept 2021]; *People v Gillie*, 185 AD3d 1539 [4th Dept 2020]; *People v Farrell*, 169 AD3d 919, 920-921 [2d Dept 2019]; *People v Jones*, 166 AD3d 1479 [4th Dept 2018]; *People v Young*, 296 AD2d 588, 593 [3d Dept 2002]; *People v Masucci*, 266 AD2d 579, 580-581 [3d Dept 1995]).

### ***Circumstances of the Offense***

Absence of violence or threats of violence by the defendant (*see People v Lakatosz*, 59 AD3d 813, 817 [3d Dept 2009]; *see also People v Howard*, 120 AD3d 1259, 1261 [2d Dept 2014]).

Nonviolent drug sales (*see People v Tuff*, 156 AD3d 1372 [4th Dept 2017]).

Victim acting violently or as the initial aggressor (*see People v Jones*, 166 AD3d 1479 [4th Dept 2018] [victim was rival gang member attempting armed robbery of defendant's gang]).

### ***Defendant's History***

Employment history and vocational skills (*see People v Colon*, 192 AD3d 1567 [4th Dept 2021]; *People v Oliveras*, 163 AD2d 258, 259 [1st Dept 1990]).

History as a victim domestic violence (*see People v Colon*, 192 AD3d 1567 [4th Dept 2021]; *People v Addimando*, 197 AD3d 106 [2d Dept 2021]).

Good reputation in school and community (*see People v Williams*, 2023 NY Slip Op 04260 [1st Dept 2023]).

Lack of, or minimal, criminal history (*see People v Franklin*, 206 AD3d 1610 [4th Dept 2022]; *People v Colon*, 192 AD3d 1567 [4th Dept 2021]; *People v Caballero*, 199 AD3d 1468 [4th Dept 2021]; *People v Farrell*, 169 AD3d 919, 920-921 [2d Dept 2019]; *People v Jones*, 166 AD3d 1479 [4th Dept 2018]; *People v Charles*, 124 AD3d 986, 988 [3d Dept 2015]; *People v Lakatosz*, 59 AD3d 813, 816 [3d Dept 2009]; *People v Cruz*, 41 AD3d 893, 896-897 [3d Dept 2007]; *see People v Young*, 296 AD2d 588, 593 [3d Dept 2002] [attempted murder case]; *People v Kerringer*, 195 AD3d 861 [2d Dept 2021]).

Nature of a defendant's prior convictions (*see People v Socciarelli*, 203 AD3d 1642 [4th Dept 2022]; *People v Kordish*, 140 AD3d 981, 982-983 [2d Dept 2016]; *People v Kearns*, 66 AD3d 1084, 1085 [3d Dept 2009]).

### ***Defendant's Actions after the Crime***

Acceptance of responsibility and expression of remorse (*see People v Kerringer*, 195 AD3d 861 [2d Dept 2021]; *People v Masucci*, 266 AD2d 579, 580-581 [3d Dept 1995]).

Cooperation with authorities (*see People v Walker*, 53 AD3d 672, 673 [2d Dept 2008]; *People v Riley*, 152 AD2d 757, 758-759 [2d Dept 1989]).

Efforts towards rehabilitation (*see People v Williams*, 2023 NY Slip Op 04260 [1st Dept 2023]; *People v Smith*, 222 AD2d 738, 738 [3d Dept 1995]; *see also People v Howard*, 120 AD3d 1259, 1261 [2d Dept 2014]).

### ***Sentencing Considerations***

A disparity between a defendant's and a codefendant's sentence, especially if the codefendant was the more culpable or principal actor (*see People v Colon*, 192 AD3d 1567 [4th Dept 2021]; *People v Wagoner*, 195 AD3d 1595 [4th Dept 2021]; *People v Farrell*, 169 AD3d 919, 920-921 [2d Dept 2019]; *People v Collazo*, 45 AD3d 899, 901-902 [3d Dept 2007]; *People v Kronberg*, 277 AD2d 182, 182-183 [1st Dept 2000] [sentence of six months' incarceration, five years' probation deemed excessive]).

Incentive for the defendant to work toward rehabilitation created by reduction of a functional life sentence (*see People v Franklin*, 206 AD3d 1610 [4th Dept 2022]).

Length of sentence in other cases involving similar charges and facts (*see People v Lakatosz*, 59 AD3d 813, 816-817 [3d Dept 2009]; *see People v Young*, 296 AD2d 588, 593 [3d Dept 2002] [attempted murder case]).

Sentence offered in plea negotiations much less than sentence after trial (*see People v Jones*, 166 AD3d 1479 [4th Dept 2018]; *People v Riback*, 57 AD3d 1209, 1218 [3d Dept 2008] [*revd on other grounds* 13 NY3d 416]; *People v Cruz*, 41 AD3d 893, 896-897 [3d Dept 2007]; *People v Morton*, 288 AD2d 557, 559 [3d Dept 2001]); *People v Lakatosz*, 59 AD3d 813 [3d Dept 2009]).

Sentence offered preindictment much less than postindictment plea offer (*see People v Socciarelli*, 203 AD3d 1642 [4th Dept 2022]).

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